

STANDARD

**United States District Court  
Eastern District of Pennsylvania (Philadelphia)  
CIVIL DOCKET FOR CASE #: 2:06-cv-03413-JG  
Internal Use Only**

TULLY v. COLLICK  
Assigned to: HONORABLE JAMES T. GILES  
Cause: 28:1332 Diversity-Personal Injury

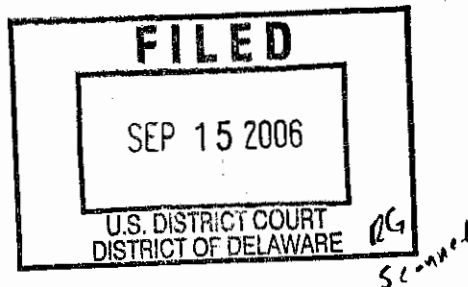
Date Filed: 08/02/2006  
Jury Demand: None  
Nature of Suit: 360 P.I.: Other  
Jurisdiction: Diversity

**Plaintiff**

**FRANCIS TULLY**

06-581

represented by **FRANK J. MARCONE**  
LAW OFFICES OF FRANK J.  
MARCONE  
2530 NORTH PROVIDENCE ROAD  
UPPER PROVIDENCE, PA 19063  
610-595-1441  
Fax: 610-595-1448  
Email: frankmarcone@comcast.net  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**



V.

**Defendant**

**ANTHONY COLLICK**

represented by **ROBERT J. FOSTER**  
REGER RIZZO KAVULICH &  
DARNALL, LLP  
CIRA CENTRE 13TH FL  
2929 ARCH ST.  
PHILADELPHIA, PA 19104-2899  
215-495-6500  
Email: rfooster@regrizlaw.com  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

Date Filed	#	Docket Text
08/02/2006	1	COMPLAINT against ANTHONY COLLICK ( Filing fee \$ 350 receipt number 931187.), filed by FRANCIS TULLY.(tj, ) (Entered: 08/03/2006)
08/02/2006		Summons Issued; 1 Mailed to counsel 8/3/06 as to ANTHONY COLLICK. (tj, ) (Entered: 08/03/2006)

A TRUE COPY CERTIFIED TO FROM THE RECORD

DATED: 9-14-06

ATTEST: *James T. Giles*

DEPUTY CLERK, UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

08/02/2006	●	DEMAND for Trial by Jury by FRANCIS TULLY. (tj, ) (Entered: 08/03/2006)
08/02/2006		Standard Case Management Track (tj, ) (Entered: 08/03/2006)
08/21/2006	●2	NOTICE of Appearance by ROBERT J. FOSTER on behalf of ANTHONY COLLICK with Certificate of Service (FOSTER, ROBERT) (Entered: 08/21/2006)
08/22/2006	●3	MOTION to Dismiss <i>or for Transfer of Venue</i> filed by ANTHONY COLLICK.. (Attachments: # <u>1</u> Text of Proposed Order)(FOSTER, ROBERT) (Entered: 08/22/2006)
09/13/2006	●4	ORDER THAT DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT OR IN THE ALTERNATIVE FOR TRANSFER OF VENUE IS GRANTED, THE COURT HAS NO PERSONAL JURISDICTION OVER DEFENDANT, ALL NECESSARY EVIDENCE TO PROVE CLAIM OR TO ALLOW DEFENSE TO PLAINTIFF'S CLAIMS IS LOCATED IN THE STATE OF DELAWARE. SIGNED BY JUDGE JAMES T. GILES ON 9/11/06.9/13/06 ENTERED AND COPIES MAILED AND FAXED. (afm, ) (Entered: 09/13/2006)
09/13/2006	●	Original record together with certified copy of docket entries forwarded to The United States District Court for the District of Delaware. (jpd) (Entered: 09/14/2006)
09/13/2006		***Deadlines terminated., ***Documents terminated. (jpd) (Entered: 09/14/2006)

*#350*  
**JTG**

Frank J. Marcone, Esquire  
2530 N. Providence Road  
Media, Pennsylvania 19063

06-581

Att. ID# 8967  
Tel. 484 442 8305  
Fax 484 442 8306

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

**FILED**

FRANCIS TULLY  
3131 MEETINGHOUSE ROAD  
APT A 7  
MARCUS HOOK, PENNSYLVANIA 19061  
Plaintiff

AUG - 2 2006

Min.

Dep. Clerk

**06 - 3413**

vs.

ANTHONY COLLICK  
928 CLAYTON STREET  
NEW CASTLE, DELAWARE 19720  
Defendant

06-581

Jury trial

**FILED**

SEP 15 2006

U.S. DISTRICT COURT  
DISTRICT OF DELAWARE

*RC*  
*SEARCHED*

**COMPLAINT**

Francis Tully, by his attorney, Frank J. Marcone, Esquire, files this Complaint averring negligence and an injury resulting therefrom and in support of his Complaint he avers the following:

1. Jurisdiction of the Court is based upon the provisions of 28 U.S.C.A § 1332 wherein diversity of citizenship is averred.
2. Francis Tully is an individual who resides within the Commonwealth of Pennsylvania and more specifically at 3131 MEETINGHOUSE ROAD : APT A 7, MARCUS HOOK, PENNSYLVANIA 19061. He is the Plaintiff herein.
3. Anthony Collick is an individual who resides in the State of Delaware and more

*8-3-06*  
*lx*

specifically at 928 Clayton Street, New Castle Delaware. 19720.

4. On or about the fifth day of August , 2004, the Plaintiff was at the home of the Defendant, 928 Clayton Street, New Castle, Delaware where he had been invited for the purposes of providing replacement windows for the structure owned and occupied by the Defendant.

5. The time was about 7:00 P.M. and the Plaintiff approached the home and rang the doorbell. The Defendant appeared and after a short discussion occurring with the Plaintiff outside and the Defendant, inside the residence, the Plaintiff retreated to his vehicle for the purposes of recovering his replacement window samples.

6. The Plaintiff thereupon returned to the residence and attempted to gain entrance there. As he was mounting the steps which form the front entrance to the residence, the Plaintiff was caused to fall and gash his left shin or leg causing a serious wound which bled profusely.

7. The fall was the result of a condition which the Defendant had permitted to exist and consisted of a set of steps forming the entryway into the home when said steps were uneven, were out of code and the risers were not those which were required by code. The Plaintiff fell while attempting to climb the entry way stairs carrying his sample bags and no one opened the outside door for him contributing to his inability to safely negotiate the stairs.

8. Immediately following the fall, the Plaintiff suffered a massive hemorrhaging of his leg and he was able to get back to his car where he had a large clean white towel. He was able to wrap the injury temporarily.

9. The Defendant, recognizing the severity of the laceration and loss of surface

skin, immediately summoned 911 which resulted in the arrival of an ambulance.

10. The Defendant thereafter was rushed to Christiana Hospital where he was admitted to the Emergency Room and eventually was sutured. He believes he had approximately 12 sutures and he was then released in the early morning hours of the following day.

11. When the above described incident occurred, the Plaintiff was and remains suffering from Diabetes and the wound resisted conservative efforts to heal. He was given continuous treatment and during the treatment was instructed that he could not continue his employment.

12. As a result of the injury and the medical care required to bring the wound to a state that was acceptable resulted in medical costs in excess of \$7,500.00.

13. That the Plaintiff was completely disabled and his loss of earnings exceeded \$45,000.00 and is continuing.

**COUNT ONE**  
**PAIN AND SUFFERING**

14. The Plaintiff incorporates by reference *all* the above averments in paragraphs one through thirteen and continues as follows:

15. As a result of the injury described herein the Plaintiff suffered extraordinary pain and disability. He was unable to attend to his personal needs and required nursing and continued medical treatment to attend to the severity of the wound.

16. As a result of the injury described herein, the Plaintiff suffered both physical and



mental pain and suffering from the time of the injury to the present time and he expects to suffer the affects of said injury long into the future.

17. The physical pain and suffering was a direct result of the negligence of the Defendant, Anthony Collick.

18. The Plaintiff has also suffered from the disability resulting from the negligence of the Defendant and said disability has resulted in a claim for pain and suffering.

**WHEREFORE**, the Plaintiff prays the Court to enter a Judgement in his favor and against the Defendant, Anthony Collick in an amount in excess of \$100,000 on Count Once.

**COUNT TWO**  
**LOSS OF EARNINGS AND**  
**MEDICAL EXPENSES**

19. The Plaintiff incorporates by reference all the averments contained in Paragraphs one through 18 and continues as follows:

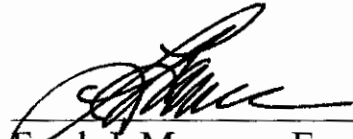
20. As a result of the negligence of the Defendant, the Plaintiff has been caused to be unemployed and to expend various sums for medical expenses.

21. The loss of earnings and medical expenses were the direct and proximate result of the negligence of the Defendant.

22. As a result of the negligence of the Defendant, the Plaintiff has thus far been caused to expend in excess of \$47,000 in loss of earnings and medical expenses

**WHEREFORE**, the Plaintiff prays the Court enter a judgment against the Defendant and in favor of the Plaintiff in an amount in excess of \$50,000 on Count Two.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Frank J. Marcone', is written over a horizontal line.

Frank J. Marcone, Esquire  
Attorney for the Plaintiff  
Francis Tully

July 30, 2006

JS 44 (Rev. 11/04)

## CIVIL COVER SHEET

06 -3413 APPENDIX H

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

Francis Tully

(b) County of Residence of First Listed Plaintiff

Delaware

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

FRANK J. MARCONE  
2530 N. PROVIDENCE Rd. Media PA

## DEFENDANTS

Anthony Collick

County of Residence of First Listed Defendant

State of Del

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

☐ 1 U.S. Government Plaintiff☐ 3 Federal Question (U.S. Government Not a Party)☐ 2 U.S. Government Defendant☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

PTF Citizen of This State

DEF

☒ 1 Incorporated or Principal Place of Business in This StatePTF DEF ☐ 4 ☐ 4

Citizen of Another State

☒ 2 Incorporated and Principal Place of Business in Another State☐ 5 ☐ 5

Citizen or Subject of a Foreign Country

☐ 3 Foreign Nation☐ 6 ☐ 6

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

## CONTRACT

- ☐ 110 Insurance  
☐ 120 Marine  
☐ 130 Miller Act  
☐ 140 Negotiable Instrument  
☐ 150 Recovery of Overpayment & Enforcement of Judgment  
☐ 151 Medicare Act  
☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)  
☐ 153 Recovery of Overpayment of Veteran's Benefits  
☐ 160 Stockholders' Suits  
☐ 190 Other Contract  
☐ 195 Contract Product Liability  
☐ 196 Franchise

## REAL PROPERTY

- ☐ 210 Land Condemnation  
☐ 220 Foreclosure  
☐ 230 Rent Lease & Ejectment  
☐ 240 Torts to Land  
☐ 245 Tort Product Liability  
☐ 290 All Other Real Property

## TORTS

## PERSONAL INJURY

- ☐ 310 Airplane  
☐ 315 Airplane Product Liability  
☐ 320 Assault, Libel & Slander  
☐ 330 Federal Employers' Liability  
☐ 340 Marine  
☐ 345 Marine Product Liability  
☐ 350 Motor Vehicle  
☒ 355 Motor Vehicle Product Liability  
☐ 360 Other Personal Injury

## PERSONAL INJURY

- ☐ 362 Personal Injury - Med. Malpractice  
☐ 365 Personal Injury - Product Liability  
☐ 368 Asbestos Personal Injury Product Liability  
☐ 370 Other Fraud  
☐ 371 Truth in Lending  
☐ 380 Other Personal Property Damage  
☐ 385 Property Damage Product Liability

## PRISONER PETITIONS

- ☐ 510 Motions to Vacate Sentence  
☐ Habeas Corpus:  
☐ 530 General  
☐ 535 Death Penalty  
☐ 540 Mandamus & Other  
☐ 550 Civil Rights  
☐ 555 Prison Condition

## FORFEITURE/PENALTY

- ☐ 610 Agriculture  
☐ 620 Other Food & Drug  
☐ 625 Drug Related Seizure of Property 21 USC 881  
☐ 630 Liquor Laws  
☐ 640 R.R. & Truck  
☐ 650 Airline Regs.  
☐ 660 Occupational Safety/Health  
☐ 690 Other

## LABOR

- ☐ 710 Fair Labor Standards Act  
☐ 720 Labor/Mgmt. Relations  
☐ 730 Labor/Mgmt. Reporting & Disclosure Act  
☐ 740 Railway Labor Act  
☐ 790 Other Labor Litigation  
☐ 791 Empl. Ret. Inc. Security Act

## BANKRUPTCY

- ☐ 422 Appeal 28 USC 158  
☐ 423 Withdrawal 28 USC 157

## PROPERTY RIGHTS

- ☐ 820 Copyrights  
☐ 830 Patent  
☐ 840 Trademark

## SOCIAL SECURITY

- ☐ 861 HIA (1395ff)  
☐ 862 Black Lung (923)  
☐ 863 DIWC/DIWW (405(g))  
☐ 864 SSID Title XVI  
☐ 865 RSI (405(g))

## FEDERAL TAX SUITS

- ☐ 870 Taxes (U.S. Plaintiff or Defendant)  
☐ 871 IRS—Third Party 26 USC 7609

## OTHER STATUTES

- ☐ 400 State Reapportionment  
☐ 410 Antitrust  
☐ 430 Banks and Banking  
☐ 450 Commerce  
☐ 460 Deportation  
☐ 470 Racketeer Influenced and Corrupt Organizations  
☐ 480 Consumer Credit  
☐ 490 Cable/Sat TV  
☐ 810 Selective Service  
☐ 850 Securities/Commodities/Exchange  
☐ 875 Customer Challenge 12 USC 3410  
☐ 890 Other Statutory Actions  
☐ 891 Agricultural Acts  
☐ 892 Economic Stabilization Act  
☐ 893 Environmental Matters  
☐ 894 Energy Allocation Act  
☐ 895 Freedom of Information Act  
☐ 900 Appeal of Fee Determination Under Equal Access to Justice  
☐ 950 Constitutionality of State Statutes

## V. ORIGIN

(Place an "X" in One Box Only)

☒ 1 Original Proceeding☐ 2 Removed from State Court☐ 3 Remanded from Appellate Court☐ 4 Reinstated or Reopened☐ 5 Transferred from another district (specify)☐ 6 Multidistrict Litigation☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 USC § 1332

Brief description of cause:

Plt. business visitor fell at Def't's house.

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

## VIII. RELATED CASE(S)

IF ANY NONE

(See instructions):

JUDGE

DOCKET NUMBER

AUG 02 2006

DATE

Aug 2, 2006

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

FILED

SEP 15 2006

U.S. DISTRICT COURT  
DISTRICT OF DELAWARE

06 -3413

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## UNITED STATES DISTRICT COURT

06 - 3413

APPENDIX F

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 3131 Meetinghouse Road, Apt A-7, Marcus Hook PA 19061

Address of Defendant: 928 Clayton Street, New Castle, Del.

Place of Accident, Incident or Transaction: 928 Clayton Street, New Castle Delaware  
(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes ☐No ☒

Does this case involve multidistrict litigation possibilities?

Yes ☐No ☒

RELATED CASE, IF ANY: None

Case Number: Judge Date Terminated:

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?  
Yes ☐ No ☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?  
Yes ☐ No ☒
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?  
Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

## A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☐ All other Federal Question Cases  
(Please specify)

## B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☒ Motor Vehicle Personal Injury
6. ☒ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases

(Please specify)

fall down while on business

## ARBITRATION CERTIFICATION

(Check appropriate Category)

I, FRANK J. MARCONE, counsel of record do hereby certify:

☒ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;☐ Relief other than monetary damages is sought.

DATE: Aug 2, 2006

Attorney-at-Law

8967

Attorney I.D.#

AUG 02 2006

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: Aug 2, 2006

Attorney-at-Law

8967

Attorney I.D.#

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA  
US COURTHOUSE  
601 MARKET STREET  
PHILADELPHIA, PA 19106-1797

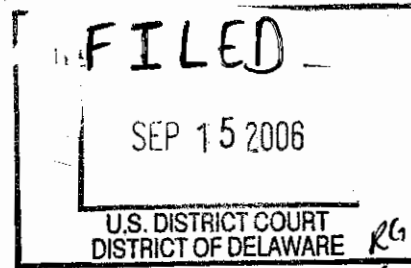
MICHAEL E. KUNZ  
CLERK OF COURT

August 22, 2006

CLERK'S OFFICE  
ROOM 2609  
TELEPHONE  
(215) 597-7704

U.S. DISTRICT COURT  
DISTRICT OF DELAWARE  
J. CALEB BOGGS FEDERAL BUILDING  
844 KING STREET, LOCKBOX 18  
WILMINGTON, DE 19801-3570  
ATTN: Peter T. Dalleo, Clerk

06-581



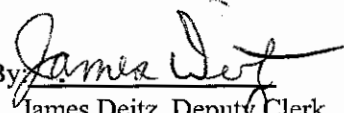
RE: TULLY v. COLLICK.  
06-CV-3413

Dear Clerk:

We herewith enclose the original record which has been transferred to you pursuant to Order of this Court dated 9/13/06. Kindly acknowledge receipt on the copy of the letter provided. Please feel free to contact me if you have any questions at 267-299-7003.

Very truly yours,

MICHAEL E. KUNZ  
Clerk of Court

By   
James Deitz, Deputy Clerk

cc: File

Received above material or record file this      day of,

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

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06-1001

2

**UNITED STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF PENNSYLVANIA**

FRANCIS TULLY

**Plaintiff**

CIVIL ACTION NO.: 06-cv-3413 JTG

06 581

v.

ANTHONY COLLICK

**Defendant**

**FILED**

SEP 15 2006

U.S. DISTRICT COURT  
DISTRICT OF DELAWARE

RG  
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**ENTRY OF APPEARANCE**

TO THE CLERK OF COURT:

Kindly enter our appearance on behalf of Defendant, Anthony Collick, regarding the above-captioned matter.

**REGER RIZZO KAVULICH & DARNALL LLP**

Date

By: \_\_\_\_\_

Robert J. Foster, Esquire  
David A. DuBois, Esquire  
Cira Centre, 13<sup>th</sup> Floor  
2929 Arch Street  
Philadelphia, PA 19104-2899  
(215) 495-6500

Attorneys for Defendant,  
Anthony Collick

06-1001

**UNITED STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF PENNSYLVANIA**

FRANCIS TULLY	:	CIVIL ACTION NO.: 06-cv-3413 JTG
<b>Plaintiff</b>	:	
	:	
v.	:	
	:	
ANTHONY COLLICK	:	
<b>Defendant</b>	:	
	:	

**CERTIFICATE OF SERVICE**

I, ROBERT J. FOSTER, ESQUIRE, Esquire, attorney for Defendant, Anthony Collick, hereby certify that a copy of my Entry of Appearance was served on August 21, 2006, by First Class Mail, postage prepaid, upon the following:

Frank J. Marcone, Esquire  
2530 N. Providence Road  
Media, Pennsylvania 19063

**REGER RIZZO KAVULICH & DARNALL LLP**

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
Robert J. Foster, Esquire  
Cira Centre, 13<sup>th</sup> Floor  
2929 Arch Street  
Philadelphia, PA 19104-2899  
(215) 495-6500  
  
Attorney for Defendant,  
Anthony Collick

06-581

3

UNITED STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF PENNSYLVANIA

FRANCIS TULLY

Plaintiff

CIVIL ACTION

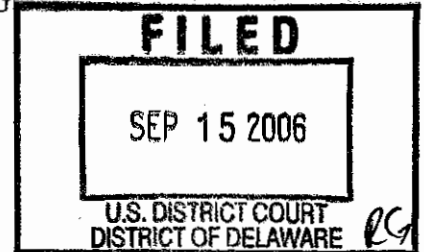
06-581

NO.: 06-CV-3413 JTG

v.

ANTHONY COLLICK

Defendant



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**MOTION OF DEFENDANT, ANTHONY COLLICK, TO DISMISS PLAINTIFF'S  
COMPLAINT OR IN THE ALTERNATIVE FOR TRANSFER OF VENUE**

Defendant, Anthony Collick ("Collick"), hereby moves the Court pursuant to Federal Rule of Civil Procedure 12(b)(2) for an Order dismissing the action with prejudice, or in the alternative, for an Order pursuant to Federal Rule of Civil Procedure 12(b)(3) transferring the action to the United States Court for the District of Delaware.

The grounds for this Motion are set forth in the attached Memorandum of Law, which is incorporated herein.

Date: August 22, 2006

REGER RIZZO KAVULICH & DARNALL LLP

By: /s/ Robert J. Foster, Esquire  
Robert J. Foster, Esquire  
David A. DuBois, Esquire  
Cira Centre, 13<sup>th</sup> Floor, 2929 Arch Street  
Philadelphia, PA 19104  
Attorneys for Defendant,  
Anthony Collick



UNITED STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF PENNSYLVANIA

FRANCIS TULLY	:	CIVIL ACTION
Plaintiff	:	
	:	NO.: 06-CV-3413 JTG
	:	
v.	:	
	:	
ANTHONY COLLICK	:	
Defendant	:	

**MEMORANDUM OF LAW IN SUPPORT OF MOTION OF DEFENDANT , ANTHONY  
COLLICK, TO DISMISS PLAINTIFF'S COMPLAINT OR IN THE ALTERNATIVE  
FOR TRANSFER OF VENUE**

**I. INTRODUCTION**

Plaintiff's Complaint seeks damages for personal injuries sustained by Francis Tully while at the residence of Defendant in New Castle, Delaware. The Complaint fails to allege facts to support Plaintiff's claim that this Honorable Court has personal jurisdiction over Defendant, Anthony Collick ("Collick"). Therefore, the Complaint should be dismissed pursuant to Fed. R. Civ. P 12(b)(2) for lack of personal jurisdiction over the defendant. Should the Plaintiff show that this Court has personal jurisdiction over the Defendant, then the action should be transferred pursuant to Fed. R. Civ. P. 12(b)(3) to the United States Court for the District of Delaware, where venue would be proper.

## II. STATEMENT OF FACTS

Plaintiff Francis Tully is a resident of the Commonwealth of Pennsylvania. (Compl., ¶ 2). A true and correct copy of Plaintiff's Complaint is attached hereto as Exhibit "A". Defendant Anthony Collick is a resident of the State of Delaware. (Compl., ¶ 3). On or about August 5, 2004, Francis Tully traveled to Collick's resident in New Castle, Delaware, for the purpose of providing an estimate for replacement windows for Collick's home. At the time, Francis Tully was employed by Sears Roebuck & Company. *See* "Letter of June 19, 2006", a true and correct copy of which is attached hereto as Exhibit "B". The plaintiff was injured while entering the property, resulting in this claim. The Complaint provides no other information regarding Defendant's contact with the Commonwealth of Pennsylvania.

## III. ARGUMENT

### **A. Plaintiff's Complaint Must be Dismissed Pursuant to Rule 12(b)(2) Because this Court does not have Personal Jurisdiction over the Defendant.**

In reviewing a motion to dismiss under Rule 12(b)(2), all of the allegations presented by the plaintiff must be accepted as true, and all disputed facts must be construed in favor of the plaintiff. *See Feldman v. Bally's Park Place, Inc.*, 2006 U.S. Dist. LEXIS 37172, \*4 (E.D. Pa. 2006). However, once a jurisdictional defense has been properly raised, "the plaintiff bears the burden of proving, either by sworn affidavits or other competent evidence, sufficient contacts with the forum state to establish personal jurisdiction". *Id.*; *citing North Penn Gas Co. v. Corning Natural Gas Corp.*, 897 F.2d 687, 689 (3d. Cir. 1990)(per curiam).

Tully cannot establish that this Court has personal jurisdiction over Collick. The accident happened in Defendant's home in Delaware. Tully has failed to allege the existence of any

contacts between Collick and Pennsylvania. Accordingly, Tully's claim should be dismissed due to lack of personal jurisdiction over Defendant.

Under the Federal Rules of Civil Procedure, the district courts may exercise personal jurisdiction over non-residents to the extent permitted by the law of the state in which the district court sits. *See Fed. R. Civ.Pro. 4(e)*. In Pennsylvania, "the jurisdiction of the tribunals of this Commonwealth shall extend to all persons...to the fullest extent allowed under the Constitution of the United States and may be based on the most minimum contact with this Commonwealth allowed under the Constitution of the United States". 42 Pa.C.S.A. §5322(b); *Van Buskirk v. Carey Canadian Mines, Ltd.*, 760 F.2d 481, 489-90 (3d. Cir. 1985). Pennsylvania law is thus co-existent with the due process clause of the Fourteenth Amendment to the United States Constitution. *See North Penn Gas*, 897 F.2d at 690. The due process clause permits the court to assert personal jurisdiction over a nonresident defendant who has 'certain minimum contacts with [the forum] such that the maintenance of [a] suit does not offend traditional notions of fair play and substantial justice.'. *Feldman v. Bally's Park Place*, 2006 U.S. Dist. LEXIS 37172 at \*5, quoting *Int'l Shoe Co. v. Wash.*, 326 U.S. 310, 316 (1945).

Personal jurisdiction may be either specific or general. "Specific jurisdiction is invoked when the cause of action arises from the defendant's forum related activities. To establish specific jurisdiction a plaintiff must show that the defendant has minimum contacts with the state 'such that [the defendant] should reasonably anticipate being haled into court there.' " *North Penn Gas Co. v. Corning Natural Gas Corp.*, 897 F.2d 687, 690 (3d. Cir. 1990) (per curiam), quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980). General jurisdiction, by contract, is implicated when the cause of action arises from the defendant' non-forum related activities. *See Helicopteros Nacionales de Colombia S.A. v. Hall*, 466 U.S. 408,

414 n.9 (1984). To establish general jurisdiction, a plaintiff must show that the defendant maintained “continuous and substantial” connection with the forum state. *Id.*

Tully has set forth no allegations that Collick maintained any connection with Pennsylvania whatsoever, let alone a “continuous and substantial” connection that would give this Court general jurisdiction over Collick. Tully has not averred the existence of any activity directed from Defendant to the Commonwealth of Pennsylvania.

Specific jurisdiction is also non-existent. All interactions between the individual parties occurred at Defendant’s home in New Castle, Delaware. Plaintiff’s injury was sustained in Delaware. The injuries sustained by Plaintiff resulted from a dangerous condition existing in Delaware. No facts have been pleaded which would support a conclusion that Defendant availed himself in any manner of the benefits and protections of Pennsylvania law, and therefore could have anticipated being haled into court in Pennsylvania. As Plaintiff has failed to put forth any evidence which establishes contact between Defendant and the Commonwealth of Pennsylvania, it cannot be found that this Honorable Court retains personal jurisdiction over Defendant. Accordingly, pursuant to Federal Rule of Civil Procedure 12(b)(2), Plaintiff’s Complaint must be dismissed for lack of personal jurisdiction,.

**B. Alternatively, Defendant Moves for a Transfer of the Case to the United States District Court for the District of Delaware, as Venue is Improper in Pennsylvania.**

Federal Rule of Civil Procedure 12(b)(3) permits a defendant to move for dismissal of an action for improper venue. In reviewing a motion to dismiss for improper venue, the court must accept all of the plaintiff’s well-pleaded factual allegations as true, and any factual disputes must be resolved in favor of the plaintiff. *See Dobrick-Peirce v. Open Options, Inc., et al.*, 2006 U.S.

Dist. LEXIS 50874, at \*13 (W.D. Pa. 2006); *CQ, Inc. v. TXU Mining Co., L.P.*, 2006 U.S. Dist. LEXIS 4258 (W.D. Pa. 2006). "In other words, to prevail on a motion to dismiss for improper venue the defendant must present facts that sufficiently defeat the plaintiff's assertion of venue". *Dobrick Peirce*, 2006 U.S. Dist LEXIS 50874, *supra*, at \* 13.

Venue may be properly laid in:

"(1) a judicial district where any defendant resides, if all defendants reside in the same State, (2) a judicial district in which a substantial part of the events or omissions occurred, or a substantial part of property that is the subject of the action is situated, or (3) a judicial district in which any defendant may be found, if there is no district in which the action may otherwise be brought".

28 U.S.C. § 1391(b); *see also Dobrick Peirce*, 2006 U.S. Dist LEXIS 50874, *supra*, at \* 15.

However, Plaintiff has failed to allege any facts that support the placement of venue in Pennsylvania under any of the aforementioned considerations.

It is undisputed that Defendant does not reside in the Commonwealth of Pennsylvania. Rather, Defendant resides in Delaware. Additionally, the events giving rise to Plaintiff's action, to wit, the fall on the steps leading to Defendant's home, occurred in Delaware. Finally, Plaintiff has failed to allege that Defendant may be found within Pennsylvania. Venue is only proper within the District of Delaware, where Defendant resides and where the acts giving rise to Plaintiff's cause of action occurred. Accordingly, should the Court have personal jurisdiction over Defendant, pursuant to Federal Rule of Civil Procedure 12(b)(3) the action must be transferred to the United States District Court for the District of Delaware.



#### **IV. CONCLUSION**

For the foregoing reasons, Defendant, Anthony Collick, respectfully requests that this Honorable Court enter an Order dismissing Plaintiff's Complaint with prejudice pursuant to Federal Rule of Civil Procedure 12(b)(2), for lack of personal jurisdiction. Alternatively, Defendant respectfully requests this Honorable Court to enter an Order transferring the action to the United States District Court for the District of Delaware, pursuant to Federal Rule of Civil Procedure 12(b)(3).

Respectfully submitted,

REGER RIZZO KAVULICH & DARNALL LLP

Date: August 22, 2006

By: /s/ Robert J. Foster, Esquire

Robert J. Foster, Esquire

David A. DuBois, Esquire

Cira Centre, 13<sup>th</sup> Floor, 2929 Arch Street

Philadelphia, PA 19104

Attorneys for Defendant,

Anthony Collick

UNITED STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF PENNSYLVANIA

FRANCIS TULLY	:	CIVIL ACTION
Plaintiff	:	
	:	NO.: 06-CV-3413 JTG
	:	
v.	:	
	:	
ANTHONY COLLICK	:	
Defendant	:	

**CERTIFICATE OF SERVICE**

I, ROBERT J. FOSTER, ESQUIRE, hereby certify that a true and correct copy of the foregoing Motion to Dismiss Plaintiff's Complaint, or in the alternative, for Transfer of Venue, of Defendant, Anthony Collick, was mailed via first-class United States mail, postage prepaid, to the following:

Frank J. Marcone, Esquire  
2530 N. Providence Road  
Media, PA 19063

REGER RIZZO KAVULICH & DARNALL LLP

August 22, 2006

By: /s/ Robert J. Foster, Esquire  
Robert J. Foster, Esquire  
David A. DuBois, Esquire  
Cira Centre, 13<sup>th</sup> Floor, 2929 Arch Street  
Philadelphia, PA 19104  
Attorneys for Defendant,  
Anthony Collick

EXHIBIT "A"

**JTG**

Frank J. Marcone, Esquire  
2530 N. Providence Road  
Media, Pennsylvania 19063

Att. ID# 8967  
Tel. 484 442 8305  
Fax 484 442 8306

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FRANCIS TULLY  
3131 MEETINGHOUSE ROAD  
APT A 7  
MARCUS HOOK, PENNSYLVANIA 19061  
Plaintiff

vs.

ANTHONY COLLICK  
928 CLAYTON STREET  
NEW CASTLE, DELAWARE 19720  
Defendant

No.  
**06 -3413**

Jury trial

**COMPLAINT**

Francis Tully, by his attorney, Frank J. Marcone, Esquire, files this Complaint averring negligence and an injury resulting therefrom and in support of his Complaint he avers the following:

1. Jurisdiction of the Court is based upon the provisions of 28 U.S.C.A § 1332 wherein diversity of citizenship is averred.
2. Francis Tully is an individual who resides within the Commonwealth of Pennsylvania and more specifically at 3131 MEETINGHOUSE ROAD :  
APT A 7, MARCUS HOOK, PENNSYLVANIA 19061. He is the Plaintiff herein.
3. Anthony Collick is an individual who resides in the State of Delaware and more

specifically at 928 Clayton Street, New Castle Delaware, 19720.

4. On or about the fifth day of August , 2004, the Plaintiff was at the home of the Defendant, 928 Clayton Street, New Castle, Delaware where he had been invited for the purposes of providing replacement windows for the structure owned and occupied by the Defendant.
5. The time was about 7:00 P.M. and the Plaintiff approached the home and rang the doorbell. The Defendant appeared and after a short discussion occurring with the Plaintiff outside and the Defendant, inside the residence, the Plaintiff retreated to his vehicle for the purposes of recovering his replacement window samples.
6. The Plaintiff thereupon returned to the residence and attempted to gain entrance there. As he was mounting the steps which form the front entrance to the residence, the Plaintiff was caused to fall and gash his left shin or leg causing a serious wound which bled profusely.
7. The fall was the result of a condition which the Defendant had permitted to exist and consisted of a set of steps forming the entryway into the home when said steps were uneven, were out of code and the risers were not those which were required by code. The Plaintiff fell while attempting to climb the entry way stairs carrying his sample bags and no one opened the outside door for him contributing to his inability to safely negotiate the stairs.
8. Immediately following the fall, the Plaintiff suffered a massive hemorrhaging of his leg and he was able to get back to his car where he had a large clean white towel. He was able to wrap the injury temporarily.
9. The Defendant, recognizing the severity of the laceration and loss of surface



skin, immediately summoned 911 which resulted in the arrival of an ambulance.

10. The Defendant thereafter was rushed to Christiana Hospital where he was admitted to the Emergency Room and eventually was sutured. He believes he had approximately 12 sutures and he was then released in the early morning hours of the following day.

11. When the above described incident occurred, the Plaintiff was and remains suffering from Diabetes and the wound resisted conservative efforts to heal. He was given continuous treatment and during the treatment was instructed that he could not continue his employment.

12. As a result of the injury and the medical care required to bring the wound to a state that was acceptable resulted in medical costs in excess of \$7,500.00.

13. That the Plaintiff was completely disabled and his loss of earnings exceeded \$45,000.00 and is continuing.

**COUNT ONE**  
**PAIN AND SUFFERING**

14. The Plaintiff incorporates by reference all the above averments in paragraphs one through thirteen and continues as follows:

15. As a result of the injury described herein the Plaintiff suffered extraordinary pain and disability. He was unable to attend to his personal needs and required nursing and continued medical treatment to attend to the severity of the wound.

16. As a result of the injury described herein, the Plaintiff suffered both physical and

mental pain and suffering from the time of the injury to the present time and he expects to suffer the affects of said injury long into the future.

17. The physical pain and suffering was a direct result of the negligence of the Defendant, Anthony Collick.

18. The Plaintiff has also suffered from the disability resulting from the negligence of the Defendant and said disability has resulted in a claim for pain and suffering.

**WHEREFORE**, the Plaintiff prays the Court to enter a Judgement in his favor and against the Defendant, Anthony Collick in an amount in excess of \$100,000 on Count Once.

**COUNT TWO**  
**LOSS OF EARNINGS AND**  
**MEDICAL EXPENSES**

19. The Plaintiff incorporates by reference all the averments contained in Paragraphs one through 18 and continues as follows:

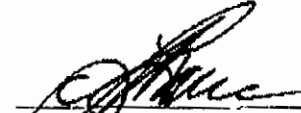
20. As a result of the negligence of the Defendant, the Plaintiff has been caused to be unemployed and to expend various sums for medical expenses.

21. The loss of earnings and medical expenses were the direct and proximate result of the negligence of the Defendant.

22. As a result of the negligence of the Defendant, the Plaintiff has thus far been caused to expend in excess of \$47,000 in loss of earnings and medical expenses

**WHEREFORE**, the Plaintiff prays the Court enter a judgment against the Defendant and in favor of the Plaintiff in an amount in excess of \$50,000 on Count Two.

Respectfully submitted,

  
\_\_\_\_\_  
Frank J. Marcone, Esquire  
Attorney for the Plaintiff  
Francis Tully

July 30, 2006

EXHIBIT “B”

*Frank J. Marcone, Esquire*  
*Attorney at Law*

*2530 North Providence Road, Upton Providence, Pennsylvania 19063*

*484 442 8305*

*Fax 484 442 8306*

*federal practice only*

June 19, 2006

Adam R. Elgary, Esquire  
MATTLEMAN WEINROTH & MILLER  
200 Continental Drive, Suite 215  
Newark, Delaware 19713

re: Anthony Collick, 928 Clayton Street, New Castle, Del.  
Our client, Francis Tully,  
d/a August 5, 2004  
our file # 04-9173

Dear Mr. Elgary:

As you may recall I wrote to your client Anthony Collick and you responded by a letter dated April 25, 2005. You were kind to include a copy of the law as it applies to this case in Delaware and I informed you my client was a business invitee since your client had requested Mr. Tully, who was employed by Sears, provide your client with an estimate for work to be performed at his home.

Mr. Tully fell while attempting to enter the home and the cause of the fall was the steps which enter the home and which do not comply with the required risers.

You further informed me that your client was notifying his carrier but I have never received any contact from a company.

The anniversary date is fast approaching and I am contacting my client seeking his permission to initiate an action here in Federal Court since there is a diversity claim and further since the injuries to Mr. Tully, who is a diabetic, have been debilitating and expensive to treat. He was covered by Workman's Compensation and that company has been seeking information regarding subrogation rights.

I would appreciate hearing from you regarding why we have not heard from a carrier.

JUN 26 2006



IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FRANCIS TULLY

Plaintiff,

v.

ANTHONY COLLICK,

Defendant.

**ENTERED** 06 581  
SEP 13 2006  
**CLERK OF COURT**

**FILED**  
SEP 13 2006  
MICHAEL E. KUNZ, Clerk  
By \_\_\_\_\_ Dep. Clerk

ORDER

06 581

AND NOW, this 11<sup>th</sup> day of September, 2006, upon consideration of Defendant's Motion to Dismiss Plaintiff's Complaint or in the Alternative for Transfer of Venue, it is hereby

ORDERED that Defendant's Motion is GRANTED in as much as:

1. The accident occurred in the State of Delaware; and
2. The complaint alleges that the accident occurred as a result of the building code of the State of Delaware or of New Castle, Delaware; and
3. Plaintiff received medical treatment at Christiana Hospital in Delaware.

Therefore, the Court concludes it has no personal jurisdiction over the Defendant and, even if it did, all necessary evidence to prove the claim or to allow a defense to Plaintiff's claims is located in the State of Delaware.

BY THE COURT:

James T. Giles, J.

9/13/06  
amc:ic  
marcane  
Foster  
- mail  
- mail

docket to  
Giles

**FILED**  
SEP 15 2006  
U.S. DISTRICT COURT  
DISTRICT OF DELAWARE  
RG  
Seal